IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.615 OF 2006

Vishwanath Sahadev Borkar ...Appellant

vs.

Shivaji Sahadev Borkar ...Respondent

Ms Vaidehi Mhaispurkar for the Appellant
Mr.P.V.Dhopatkar for the Respondent.

CORAM: A.S.OKA,J.
DATE : JULY 18, 2007.

P.C.:

1. Heard learned Advocate for the Appellant-original Plaintiff. A suit was filed by the Appellant for declaration of ownership and for injunction. The trial court partly decreed the suit by grant of a decree of declaration. However, the prayer for injunction was rejected.

2. An Appeal was filed by the Respondent-defendant to the District Court in which cross objection was filed by the present Appellant-plaintiff. The Appeal preferred by the Respondent was partly allowed and the cross objection filed by the Plaintiff was dismissed. The Appellate Court held that the Appellant-plaintiff has established ownership in respect of the property mentioned in Schedule ‘B’ of the plaint. However, in respect of the property mentioned in schedule ‘A’, it is held that the ownership is not established. The Appellate Court confirmed the decree of the trial court in so

far as refusal to grant perpetual injunction is concerned.

The decree of declaration passed by the trial court was set aside in so far as the property in schedule ‘A’ is concerned.

3. The submission of the learned Counsel for the Appellant is that admittedly Nalini was the owner of the properties mentioned in schedule ‘A’ of the plaint and after her demise, by virtue of section 15 of the Hindu Succession Act,1956, the Appellant became owner of her properties. He submitted that no evidence was led by the Respondent to show that the Appellant married to the said Nalini during the subsistence of his first marriage with one Satyawati. He submitted that the deposition of the Appellant has been misread by the trial court and there is no admission that Nalini was the second wife of the Appellant. He submitted that as no evidence was led to prove that Nalini was the second wife of the Appellant, the Appellate Court committed an error by interfering with the decree passed by the trial court.

4. I have considered the submissions. There was an issue framed by the trial court as regards ownership on the ground that the Appellant had succeeded to the properties of Nalini as per section 15 of the said Act of 1956. In the written statement filed by the respondent, a specific contention was raised that the marriage of the Appellant was performed during

the subsistence of the first marriage of the Appellant with Satyawati and therefore, the marriage between the Appellant with Nalini was null and void. Therefore, the Appellant was put to notice that this was the controversy involved in the suit. The Appellant-plaintiff has failed to establish that his marriage with Nalini was solemnised prior to his marriage with Satyawati and that the marriage was legal and valid. In view of this factual position, the Appellate Court has set aside the decree passed by the trial court in so far as the property mentioned in schedule ‘A’ is concerned.

5. The Appellate Court has denied the decree of perpetual injunction in respect of house Nos.66 and 67 on the ground that the Appellant has not established his exclusive possession There is a finding recorded by the Appellate Court that there was no need to grant perpetual injunction in respect of properties mentioned in schedule ‘A’ and Grampanchyat House no.68 as the Respondent was not claiming any interest in the said properties. therefore, the decree for perpetual injunction has been denied.

6. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

JUDGE